

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

**ABIGAIL WHALEY WILSON**  
**AKA ABIGAIL WILSON NEWTON**

Registered Nurse License Applicant

Respondent

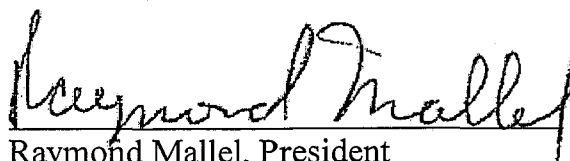
Case No. 2013 – 112

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on **January 18, 2013**.

IT IS SO ORDERED **December 20, 2012**.



Raymond Mallel, President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
12 Against:

13 **ABIGAIL WHALEY WILSON**  
**A.K.A. ABIGAIL WILSON NEWTON**  
14 **226 Cabrillo Street**  
**Costa Mesa, CA 92627**

15  
16 Respondent.

Case No. 2013-112

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

17  
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of  
22 Registered Nursing (Board). She brought this action solely in her official capacity and is  
23 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by  
24 Antoinette B. Cincotta, Deputy Attorney General.

25 2. Respondent Abigail Whaley Wilson, also known as Abigail Wilson Newton  
26 (Respondent) is represented in this proceeding by attorney Zachary D. Wechsler, Esq., whose  
27 address is: 6100 Center Drive, Suite 600, Los Angeles, CA 90045.

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3. On or about November 28, 2011, Respondent filed an application dated November 22, 2011, with the Board to obtain a registered nurse license.

## JURISDICTION

4. Statement of Issues No. 2013-112 was filed before the Board, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on August 15, 2012.

5. A copy of Statement of Issues No. 2013-112 is attached as Exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Statement of Issues No. 2013-112. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 2013-112.

10. Respondent agrees that her registered nurse license is subject to denial, and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

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1       **Severability Clause.** Each condition of probation contained herein is a separate and  
2 distinct condition. If any condition of this Order, or any application thereof, is declared  
3 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other  
4 applications thereof, shall not be affected. Each condition of this Order shall separately be valid  
5 and enforceable to the fullest extent permitted by law.

6       1.   **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and  
7 detailed account of any and all violations of law shall be reported by Respondent to the Board in  
8 writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with  
9 this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within  
10 45 days of the effective date of the decision, unless previously submitted as part of the licensure  
11 application process.

12       **Criminal Court Orders:** If Respondent is under criminal court orders, including  
13 probation or parole, and the order is violated, this shall be deemed a violation of these probation  
14 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

15       2.   **Comply with the Board's Probation Program.** Respondent shall fully comply with  
16 the conditions of the Probation Program established by the Board and cooperate with  
17 representatives of the Board in its monitoring and investigation of the Respondent's compliance  
18 with the Board's Probation Program. Respondent shall inform the Board in writing within no  
19 more than 15 days of any address change and shall at all times maintain an active, current license  
20 status with the Board, including during any period of suspension.

21       Upon successful completion of probation, Respondent's license shall be fully restored.

22       3.   **Report in Person.** Respondent, during the period of probation, shall appear in  
23 person at interviews/meetings as directed by the Board or its designated representatives.

24       4.   **Residency, Practice, or Licensure Outside of State.** Periods of residency or  
25 practice as a registered nurse outside of California shall not apply toward a reduction of this  
26 probation time period. Respondent's probation is tolled, if and when she resides outside of  
27 California. Respondent must provide written notice to the Board within 15 days of any change of

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1 residency or practice outside the state, and within 30 days prior to re-establishing residency or  
2 returning to practice in this state.

3 Respondent shall provide a list of all states and territories where she has ever been licensed  
4 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide  
5 information regarding the status of each license and any changes in such license status during the  
6 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing  
7 license during the term of probation.

8 **5. Submit Written Reports.** Respondent, during the period of probation, shall submit  
9 or cause to be submitted such written reports/declarations and verification of actions under  
10 penalty of perjury, as required by the Board. These reports/declarations shall contain statements  
11 relative to Respondent's compliance with all the conditions of the Board's Probation Program.  
12 Respondent shall immediately execute all release of information forms as may be required by the  
13 Board or its representatives.

14 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every  
15 state and territory in which she has a registered nurse license.

16 **6. Function as a Registered Nurse.** Respondent, during the period of probation, shall  
17 engage in the practice of registered nursing in California for a minimum of 24 hours per week for  
18 6 consecutive months or as determined by the Board.

19 For purposes of compliance with the section, "engage in the practice of registered nursing"  
20 may include, when approved by the Board, volunteer work as a registered nurse, or work in any  
21 non-direct patient care position that requires licensure as a registered nurse.

22 The Board may require that advanced practice nurses engage in advanced practice nursing  
23 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

24 If Respondent has not complied with this condition during the probationary term, and  
25 Respondent has presented sufficient documentation of her good faith efforts to comply with this  
26 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an  
27 extension of Respondent's probation period up to one year without further hearing in order to

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1 comply with this condition. During the one year extension, all original conditions of probation  
2 shall apply.

3       **7. Employment Approval and Reporting Requirements.** Respondent shall obtain  
4 prior approval from the Board before commencing or continuing any employment, paid or  
5 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all  
6 performance evaluations and other employment related reports as a registered nurse upon request  
7 of the Board.

8       Respondent shall provide a copy of this Decision to her employer and immediate  
9 supervisors prior to commencement of any nursing or other health care related employment.

10       In addition to the above, Respondent shall notify the Board in writing within seventy-two  
11 (72) hours after she obtains any nursing or other health care related employment. Respondent  
12 shall notify the Board in writing within seventy-two (72) hours after she is terminated or  
13 separated, regardless of cause, from any nursing, or other health care related employment with a  
14 full explanation of the circumstances surrounding the termination or separation.

15       **8. Supervision.** Respondent shall obtain prior approval from the Board regarding  
16 Respondent's level of supervision and/or collaboration before commencing or continuing any  
17 employment as a registered nurse, or education and training that includes patient care.

18       Respondent shall practice only under the direct supervision of a registered nurse in good  
19 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods  
20 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are  
21 approved.

22       Respondent's level of supervision and/or collaboration may include, but is not limited to the  
23 following:

24       (a) Maximum - The individual providing supervision and/or collaboration is present in  
25 the patient care area or in any other work setting at all times.

26       (b) Moderate - The individual providing supervision and/or collaboration is in the patient  
27 care unit or in any other work setting at least half the hours Respondent works.

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1 (c) Minimum - The individual providing supervision and/or collaboration has person-to-  
2 person communication with Respondent at least twice during each shift worked.

3 (d) Home Health Care - If Respondent is approved to work in the home health care  
4 setting, the individual providing supervision and/or collaboration shall have person-to-person  
5 communication with Respondent as required by the Board each work day. Respondent shall  
6 maintain telephone or other telecommunication contact with the individual providing supervision  
7 and/or collaboration as required by the Board during each work day. The individual providing  
8 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to  
9 patients' homes visited by Respondent with or without Respondent present.

10 9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any  
11 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,  
12 or for an in-house nursing pool.

13 Respondent shall not work for a licensed home health agency as a visiting nurse unless the  
14 registered nursing supervision and other protections for home visits have been approved by the  
15 Board. Respondent shall not work in any other registered nursing occupation where home visits  
16 are required.

17 Respondent shall not work in any health care setting as a supervisor of registered nurses.  
18 The Board may additionally restrict Respondent from supervising licensed vocational nurses  
19 and/or unlicensed assistive personnel on a case-by-case basis.

20 Respondent shall not work as a faculty member in an approved school of nursing or as an  
21 instructor in a Board approved continuing education program.

22 Respondent shall work only on a regularly assigned, identified and predetermined  
23 worksite(s) and shall not work in a float capacity.

24 If Respondent is working or intends to work in excess of 40 hours per week, the Board may  
25 request documentation to determine whether there should be restrictions on the hours of work.

26 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and  
27 successfully complete a course(s) relevant to the practice of registered nursing no later than six  
28 months prior to the end of her probationary term.



Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

11. **Violation of Probation.** If Respondent violates the conditions of her probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

12. **License Surrender.** During Respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

(1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

(2) One year for a license surrendered for a mental or physical illness.

13. **Physical Examination.** Within 45 days of the effective date of this Decision, Respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician

1 assistant, who is approved by the Board before the assessment is performed, submit an  
2 assessment of the Respondent's physical condition and capability to perform the duties of a  
3 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If  
4 medically determined, a recommended treatment program will be instituted and followed by the  
5 Respondent with the physician, nurse practitioner, or physician assistant providing written reports  
6 to the Board on forms provided by the Board.

7 If Respondent is determined to be unable to practice safely as a registered nurse, the  
8 licensed physician, nurse practitioner, or physician assistant making this determination shall  
9 immediately notify the Board and Respondent by telephone, and the Board shall request that the  
10 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall  
11 immediately cease practice and shall not resume practice until notified by the Board. During this  
12 period of suspension, Respondent shall not engage in any practice for which a license issued by  
13 the Board is required until the Board has notified Respondent that a medical determination  
14 permits Respondent to resume practice. This period of suspension will not apply to the reduction  
15 of this probationary time period.

16 If Respondent fails to have the above assessment submitted to the Board within the 45-day  
17 requirement, Respondent shall immediately cease practice and shall not resume practice until  
18 notified by the Board. This period of suspension will not apply to the reduction of this  
19 probationary time period. The Board may waive or postpone this suspension only if significant,  
20 documented evidence of mitigation is provided. Such evidence must establish good faith efforts  
21 by Respondent to obtain the assessment, and a specific date for compliance must be provided.  
22 Only one such waiver or extension may be permitted.

23 **14. Participate in Treatment/Rehabilitation Program for Chemical Dependence.**

24 Respondent, at her expense, shall successfully complete during the probationary period or shall  
25 have successfully completed prior to commencement of probation a Board-approved  
26 treatment/rehabilitation program of at least six months duration. As required, reports shall be  
27 submitted by the program on forms provided by the Board. If Respondent has not completed a  
28 Board-approved treatment/rehabilitation program prior to commencement of probation,

Respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider Respondent in violation of probation.

Based on Board recommendation, each week Respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

**15. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent shall completely abstain from the possession, injection or consumption by any route of all controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the Respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of Respondent's history of substance abuse and will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

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1 The Board may require the single coordinating physician, nurse practitioner, or physician  
2 assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive  
3 medicine.

4 **16. Submit to Tests and Samples.** Respondent, at her expense, shall participate in a  
5 random, biological fluid testing or a drug screening program which the Board approves. The  
6 length of time and frequency will be subject to approval by the Board. Respondent is responsible  
7 for keeping the Board informed of Respondent's current telephone number at all times.  
8 Respondent shall also ensure that messages may be left at the telephone number when she is not  
9 available and ensure that reports are submitted directly by the testing agency to the Board, as  
10 directed. Any confirmed positive finding shall be reported immediately to the Board by the  
11 program and Respondent shall be considered in violation of probation.

12 In addition, Respondent, at any time during the period of probation, shall fully cooperate  
13 with the Board or any of its representatives, and shall, when requested, submit to such tests and  
14 samples as the Board or its representatives may require for the detection of alcohol, narcotics,  
15 hypnotics, dangerous drugs, or other controlled substances.

16 If Respondent has a positive drug screen for any substance not legally authorized and not  
17 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board  
18 files a petition to revoke probation or an accusation, the Board may suspend Respondent from  
19 practice pending the final decision on the petition to revoke probation or the accusation. This  
20 period of suspension will not apply to the reduction of this probationary time period.

21 If Respondent fails to participate in a random, biological fluid testing or drug screening  
22 program within the specified time frame, Respondent shall immediately cease practice and shall  
23 not resume practice until notified by the Board. After taking into account documented evidence  
24 of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may  
25 suspend Respondent from practice pending the final decision on the petition to revoke probation  
26 or the accusation. This period of suspension will not apply to the reduction of this probationary  
27 time period.

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1           **17. Mental Health Examination.** Respondent shall, within 45 days of the effective date  
2 of this Decision, have a mental health examination including psychological testing as appropriate  
3 to determine her capability to perform the duties of a registered nurse. The examination will be  
4 performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by  
5 the Board. The examining mental health practitioner will submit a written report of that  
6 assessment and recommendations to the Board. All costs are the responsibility of Respondent.  
7 Recommendations for treatment, therapy or counseling made as a result of the mental health  
8 examination will be instituted and followed by Respondent.

9           If Respondent is determined to be unable to practice safely as a registered nurse, the  
10 licensed mental health care practitioner making this determination shall immediately notify the  
11 Board and Respondent by telephone, and the Board shall request that the Attorney General's  
12 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease  
13 practice and may not resume practice until notified by the Board. During this period of  
14 suspension, Respondent shall not engage in any practice for which a license issued by the Board  
15 is required, until the Board has notified Respondent that a mental health determination permits  
16 Respondent to resume practice. This period of suspension will not apply to the reduction of this  
17 probationary time period.

18           If Respondent fails to have the above assessment submitted to the Board within the 45-day  
19 requirement, Respondent shall immediately cease practice and shall not resume practice until  
20 notified by the Board. This period of suspension will not apply to the reduction of this  
21 probationary time period. The Board may waive or postpone this suspension only if significant,  
22 documented evidence of mitigation is provided. Such evidence must establish good faith efforts  
23 by Respondent to obtain the assessment, and a specific date for compliance must be provided.  
24 Only one such waiver or extension may be permitted.

25           **18. Therapy or Counseling Program.** Respondent, at her expense, shall participate in  
26 an on-going counseling program until such time as the Board releases her from this requirement  
27 and only upon the recommendation of the counselor. Written progress reports from the counselor  
28 will be required at various intervals.

1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
3 discussed it with my attorney, Zachary D. Wechsler, Esq. I understand the stipulation and the  
4 effect it will have on my application for a registered nurse license. I enter into this Stipulated  
5 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
6 bound by the Decision and Order of the Board.

7 DATED: 10-9-2012

Abigail Whaley Wilson  
8 ABIGAIL WHALEY WILSON  
9 AKA ABIGAIL WILSON NEWTON  
Respondent

10 I have read and fully discussed with Respondent Abigail Whaley Wilson, aka Abigail  
11 Wilson Newton, the terms and conditions and other matters contained in the above Stipulated  
12 Settlement and Disciplinary Order. I approve its form and content.

13 DATED: 10/9/12

Zachary D. Wechsler, Esq.  
14 ZACHARY D. WECHSLER, ESQ.  
Attorney for Respondent

15  
16 ENDORSEMENT

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
18 submitted for consideration by the Board of Registered Nursing of the Department of Consumer  
19 Affairs.

20 Dated: 10/17/2012

Respectfully submitted,

22 KAMALA D. HARRIS  
Attorney General of California  
23 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General

Antoinette E. Cincotta  
24 ANTOINETTE E. CINCOTTA  
25 Deputy Attorney General  
26 Attorneys for Complainant

27 SD2012703295  
28 70610756.doc

## **Exhibit A**

**Statement of Issues No. 2013-112**

1 KAMALA D. HARRIS  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
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*Attorneys for Complainant*

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9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
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10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
Against:

Case No. **2013-112**

12 **ABIGAIL WILSON NEWTON**  
13 **AKA ABIGAIL WHALEY WILSON**

**STATEMENT OF ISSUES**

14 **Registered Nurse License Applicant**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. On or about November 28, 2011, the Board of Registered Nursing, Department of  
23 Consumer Affairs received an application for a Registered Nurse License from Abigail Wilson  
24 Newton, aka Abigail Whaley Wilson (Respondent). On or about November 22, 2011,  
25 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and  
26 representations in the application. The Board denied the application on December 30, 2011.

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## JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

## STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3) (A) Done any act that if done by a licentiate of the business or profession  
2 in question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the  
4 crime or act is substantially related to the qualifications, functions, or duties of the  
5 business or profession for which application is made.

6 7. Section 482 of the Code states:

7 Each board under the provisions of this code shall develop criteria to evaluate  
8 the rehabilitation of a person when:

9 (a) Considering the denial of a license by the board under Section 480; or

10 (b) Considering suspension or revocation of a license under Section 490.

11 Each board shall take into account all competent evidence of rehabilitation  
12 furnished by the applicant or licensee.

13 8. Section 2761 of the Code states:

14 The board may take disciplinary action against a certified or licensed nurse or  
15 deny an application for a certificate or license for any of the following:

16 (a) Unprofessional conduct, which includes, but is not limited to, the  
17 following:

18 (f) Conviction of a felony or of any offense substantially related to the  
19 qualifications, functions, and duties of a registered nurse, in which event the record of  
20 the conviction shall be conclusive evidence thereof. . . .

21 9. Section 2762 of the Code states:

22 In addition to other acts constituting unprofessional conduct within the meaning  
23 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person  
24 licensed under this chapter to do any of the following:

25 (b) Use any controlled substance as defined in Division 10 (commencing with  
26 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous  
27 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner  
28 dangerous or injurious to himself or herself, any other person, or the public or to the  
extent that such use impairs his or her ability to conduct with safety to the public the  
practice authorized by his or her license.

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(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

10. Section 2765 states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

#### REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1444 states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

12. California Code of Regulations, title 16, section 1445 states:

(a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant. . . .

### **DRUGS**

13. Escitalopram (brand name Lexapro) is a dangerous drug pursuant to Business and Professions Code section 4022. It is used for treating depression and generalized anxiety disorder.

14. Ritalin is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(6), and is classified as a dangerous drug pursuant to Business and Professions Code section 4022. Ritalin is used in the treatment of attention deficit hyperactivity disorders.

### **FIRST CAUSE FOR DENIAL OF APPLICATION**

**(April 10, 2008 Criminal Convictions for DUI, Driving With Blood Alcohol Content of 0.08 Percent or More and Hit and Run, on December 4, 2007)**

15. Respondent's application is subject to denial under sections 480, subdivision (a)(1) and subdivision (a)(3)(A) of the Code in that she was convicted of crimes that are substantially related to the qualifications, duties, and functions of a registered nurse, which would also be grounds for discipline for a licensed registered nurse under Code section 2761, subdivision (f). The circumstances are as follows:

a. On or about April 10, 2008, in a criminal proceeding entitled *The People of the State of California v. Abigail Whaley Wilson*, in the Orange County Superior Court, Harbor Justice Center-Newport Beach Facility, Case No. 07HM09815, Respondent was convicted on her plea of guilty to violating Vehicle Code sections 23152(a) (driving under the influence of alcohol), 23152(b) (driving with a blood alcohol level (BAC) of 0.08% or more), to wit: BAC of 0.26%, and 20002(a) (hit and run), misdemeanors, with an enhancement pursuant to Vehicle Code section 23538 for having a BAC of 0.20% or higher.

b. As a result of the convictions, Respondent was placed on summary probation for three (3) years and ordered to pay various fines and fees, attend and complete a

1 9-month Level 2 First Offender Alcohol Program, pay restitution in an amount to be determined  
2 by the Court, not drive without a valid driver's license in her possession, and not drive without  
3 proof of valid auto liability insurance or financial responsibility. On or about February 8, 2012,  
4 the Court granted Respondent's Petition for Relief, set aside the conviction and dismissed the  
5 charges pursuant to Penal Code section 1203.4.

6 c. The facts that led to the convictions are that on or about December 4, 2007, at  
7 approximately 8:40 p.m., Costa Mesa Police Department officers were dispatched to a hit and run  
8 traffic collision that occurred at 3002 Royce Lane, in the City of Costa Mesa, California. Upon  
9 arrival, officers saw people pointing in a northbound direction as to the whereabouts of the person  
10 and vehicle responsible for the hit and run. Officers asked the witnesses what the vehicle looked  
11 like and were told it was a darker color Nissan. Officers began looking in the vicinity for the  
12 vehicle responsible for the hit and run and spotted a grey 2001 Nissan. As officers followed the  
13 vehicle, they could hear a loud flopping noise that appeared to be coming from a flat tire. The  
14 vehicle made a right hand turn to northbound College from Watson, failing to stop at the stop  
15 sign. Officers activated their overhead lights and stopped the vehicle.

16 d. When officers approached the vehicle, they opened the driver's door of the  
17 vehicle and Respondent almost fell out. The officer grabbed Respondent and assisted her to her  
18 feet. Respondent stumbled to the back of the car and had difficulty standing. Officers could hear  
19 a very heavy slur to her speech and observed her eyes to be red, watery and bloodshot, and a  
20 strong odor of an alcoholic beverage emanated from Respondent's breath and person. Officers  
21 directed Respondent to the back of the police unit and, as Respondent continued to stumble,  
22 almost falling once, officers grabbed her left arm and assisted her to the curb and had her sit.

23 e. During the investigation, officers observed damage to Respondent's vehicle,  
24 paint transfers, and brush and a branch stuck in the hood from an unknown tree or bush,  
25 apparently from vegetation that she struck. Respondent was asked if she had been involved in a  
26 traffic collision and Respondent told officers multiple times that she did not care and for officers  
27 to take her to jail, and then told them that she did not know anything about the collision. Officers  
28 then began a DUI investigation and field sobriety tests of Respondent. Respondent refused to

1 cooperate in the performance of field sobriety tests and admitted to officers that she had been  
2 drinking vodka and had taken Lexapro and Ritalin. When asked how much vodka she drank,  
3 Respondent told officers she had drunk half the bottle that was in her vehicle. Officers then.

4 placed Respondent under arrest for driving under the influence of alcohol. Officers informed  
5 Respondent that since she had taken Lexapro and Ritalin, that she was required to submit to a  
6 chemical test. Respondent was handcuffed and sat back down on the curb and while waiting for a  
7 unit to transport her urinated in her pants. Respondent was then escorted to a patrol unit and  
8 transported to the Orange County Jail for booking. The result of a blood test was 0.26% BAC.

9 **SECOND CAUSE FOR DENIAL OF APPLICATION**

10 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

11 16. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)  
12 of the Code, in that on or about December 4, 2007, Respondent used alcoholic beverages to an  
13 extent or in a manner that was dangerous and injurious to herself and the public when she  
14 operated a motor vehicle while under the influence of alcohol, as detailed in paragraph 15, above,  
15 which is a violation of section 2762, subdivision (b) of the Code for a licensed registered nurse.

16 **THIRD CAUSE FOR DENIAL OF APPLICATION**

17 **(Unprofessional Conduct - Conviction of Alcohol-Related Offenses)**

18 17. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A),  
19 of the Code in that on or about April 10, 2008, Respondent was convicted of criminal offenses  
20 involving the consumption of alcohol as detailed in paragraph 15, above, which are violations of  
21 section 2762, subdivision (c) of the Code for a licensed registered nurse.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Abigail Wilson Newton, aka Abigal Whaley Wilson, for a Registered Nurse License;
2. Taking such other and further action as deemed necessary and proper.

DATED: August 9, 2012 Louise R. Bailey  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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